

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

JUN 30 2005

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY DS DEPUTY

ZEPH K. SALIS,

Plaintiff,

vs.

JERRY PARKER et al.,

Defendants.

No. CIV-04-1633-W

ORDER

On June 8, 2005, United States Magistrate Judge Bana Roberts issued a Report and Recommendation in this matter and recommended that the action be dismissed without prejudice. Salis was advised of his right to object to the Report and Recommendation, but he did not file an objection within the allotted time.

Upon de novo review of the record, the Court concurs with Magistrate Judge Roberts' recommended disposition of this matter. Salis has not exhausted his administrative remedies with regard to his claims against defendant Michael R. Talley, M.D., as required by title 42, section 1997e(a) of the United States Code. In this circuit, a "total exhaustion requirement" applies to civil rights complaints filed by inmates. E.g., Ross v. County of Bernalillo, 365 F.3d 1181, 1188-90 (10th Cir. 2004). The presence of unexhausted claims in Salis' complaint therefore requires dismissal of the matter in its entirety without prejudice. Id. at 1189.

Accordingly, the Court

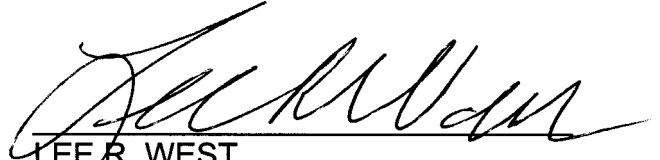
- (1) ADOPTS the Report and Recommendation issued on June 8, 2005;
- (2) GRANTS the Motion to Dismiss [Doc. 31] filed by defendants Perez, Barefoot,

Roberts, Grant, Hansen, Rivers and David Forsyth and joined in by defendants Jerry Parker, Holsapple, Roberta Hickey, Gooch and Melott and the Motion to Dismiss and Alternative Motion for Summary Judgment [Doc. 41] filed by defendant Talley to the extent these defendants seek dismissal for failure to exhaust administrative remedies;

(3) deems MOOT Salis' Motion Requesting Relief [Doc. 12] and Motion for Appointment of Counsel [Doc. 45]; and

(4) DISMISSES this matter without prejudice.

ENTERED this 28th day of June, 2005.


LEE R. WEST
UNITED STATES DISTRICT JUDGE